



MIKE DRISCOLL  
county attorney

RQ-23

December 12, 1990

#11,315  
Id 56  
GOV

1001 Preston, Suite 634  
Houston, Texas 77002  
713/221-5101  
Fax # 713/225-8924

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Honorable Jim Mattox  
Attorney General of Texas  
Supreme Court Building  
P. O. Box 12548  
Austin, Texas 78711-2548

RECEIVED

DEC 17 90

Opinion Committee

Attention: Mr. Rick Gilpin  
Opinion Committee

RE: Open Records Request regarding information  
maintained by the Sheriff of Harris County.

Gentlemen:

Sheriff Johnny Klevenhagen has requested your advice regarding two open records requests submitted by Mr. Tom Moran, an attorney, for information relating to the escape of an inmate and certain other records. Copies of the requests are attached. Said information appears to fall within the exceptions from disclosure set forth in §§3(a)(1), 3(a)(3), 3(a)(8), and 3(a)(11) of Tex. Rev. Civ. Stat. Ann. art. 6252-17a (Vernon Supp. 1990). Please furnish us your opinion as to what parts, if any, of the requested information is required to be made available for inspection and copying.

If you should have any questions regarding this matter, please let us know.

Sincerely,

MIKE DRISCOLL  
County Attorney

By Rosalinda Garcia  
Assistant County Attorney

Attach.

MEMORANDUM BRIEF

On December 3, 1990, Sheriff Johnny Klevenhagen received the enclosed requests for information from Mr. Tom Moran, an attorney, for access to and copies of certain information. Also, enclosed for your review are the records which were requested. This information appears to fall within the exceptions from disclosure set forth in §§3(a)(1), 3(a)(3), 3(a)(8) and 3(a)(11) of Tex. Rev. Civ. Stat. Ann. art. 6252-17a (Vernon Supp. 1990).

Based upon information furnished to this office by the the Sheriff and the District Attorney of Harris County, Mr. Moran represents Evan Homer Cockrell. Mr. Cockrell has been charged with bribery [Cause No. 578418]. This case is pending in the 248th Judicial District of Harris County and is set for trial on January 28, 1990. It is alleged that Mr. Cockrell aided Aaron Caldwell, a fellow inmate, in his escape from the county jail and that he attempted to bribe a deputy sheriff who was investigating Mr. Caldwell's escape.

We are also enclosing a letter, dated December 11, 1990 from Mr. William Delmore, an Assistant District Attorney, regarding the District Attorney's position regarding the disclosure of the requested information. It appears that the cases are set for trial in January. Rather than attempting to obtain access to the requested information through the discovery process, Mr. Moran is seeking to circumvent the discovery process by making this open records request. All of the requested information should be excepted from disclosure by §3(a)(3) (the "litigation exception"). Access to the requested information should be obtained through the discovery process, if at all. Tex. Att'y Gen. ORD-551 (1990).

Assuming arguendo that the entire request is not exempted from disclosure by the litigation exception, other exceptions apply. The the intraoffice memoranda and other documents regarding the actions of Cynthia Langley, a clerk employed by the Sheriff, are part of Ms. Langley's personnel file. The memoranda reflect the supervisor's advice, opinions, and recommendations and the employee's response, if any, to the evaluations. This information appears to be excepted pursuant to §3(a)(11) since the evaluations and counselling notices are intra-agency memoranda which are directly related to the decision-making processing regarding the employee's work performance and employment status. Further, note that said records include information which has been deemed confidential, i.e. fingerprint comparisons.

In addition, the records deal with the pending investigation relating to Mr. Cardwell's successful escape from the county jail and the role of his cellmate and others in this escape. The disclosure of the security measures and procedures used by the sheriff to ensure that the correct inmate is released would unduly interfere with the prevention and detection of future escapes. Therefore, the

information relating to such security measures and procedures appear to fall within the law enforcement exception. Tex. Rev. Civ. Stat. Ann. art. 6252-17a, §3(a)(8).